In the High Court of Judicature at Madras

Dated: 07.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.1551 of 2003

I.R.Babu ..Petitioner

..vs..

1. The Commandant,
   CISF Unit, NLC,
   Neyveli.

2. The Deputy Inspector General,
   CISF Unit, Rajaji Bhavan,
   Chennai. ..Respondents

Writ petition filed under Article 226 of the Constitution o India for issuance of a Writ of Certiorarified Mandamus, to call fo the records relating to the order passed by the 2nd respondent in hi Appellate order No.V-11014/80/2002/L&R(SZ) dated 20.12.2002 confirmin the order of the Commandant in his Order No.V 15014/CISF/NLC/Maj.21/IRB/2002/9722 dated 05.09.2002, quash the sam and to direct the Commandant to take the petitioner into the strengt of CISF, with all monetary benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mrs.Thenkodi Nelson ACGSC

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the orders of the respondents dated 05.09.2002 an 20.12.2002, dismissing the petitioner from service, the petitioner ha filed the above writ petition, to quash those orders and issu direction to the Commandant to take the petitioner into the strengt of CISF, with all monetary benefits.

2. Heard the learned counsel for the petitioner as well as th respondents.

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3. When the petitioner was working as Constable in CISF Unit NLC, Neyveli, he was issued with a Charge Memorandum under Rule 36 o CISF Rules, 2001. The Article of Charge reads as under:

> "Article of charge No.I
> That CISF No.912293420 Constable I.R.Babu while posted at CISF Unit NLC Neyveli indulged himself in wooing Shri K.Subramaniam, Village:Kaliarkuppam Taluk: Virudhachalam, a driver of truck No.TN 31 V 7500 and engaged him with the said truck for removing a 3 Nos.fluid coupling shell made of aluminium and one No.of bearing from specialised Mining Equipment/Re-conditioning yard at NLC on 3.9.2001 at about 2300 hrs with the intention of wrongful gain. The said act on the part of Constable I.R.Babu amounts to gross misconduct and unbecoming of a member of the Force".

4. The materials placed show that the petitioner even refused t receive the Memorandum when it was served to him in person o 29.11.2001 and 12.12.2001. Finally, it was served to him b registered post. He did not submit his written reply. Thereafter, a Enquiry Officer was appointed. Here again, though he received notic for participating in the enquiry, admittedly, he did not participat and cooperate with the Enquiry Officer.

5. Learned counsel for the petitioner submitted that due to th change of Enquiry Officer and various reasons, the petitione abstained from participating the enquiry. The fact remains that h did not participate in the enquiry and cooperate with the Enquir Officer. In other words, he lost a good opportunity to cross examin the veracity of prosecution witnesses and also putforth his ow defence.

6. Now let us consider whether the management has establishe the charge by placing acceptable materials. Totally, four witnesse were examined. P.W.1 is the Assistant Commandant working in CIS Unit, NLC, Neyveli since June 1999. It was he, who conducted th preliminary enquiry regarding the theft of Fluid coupling 3 Nos.an bearing 1 No. from SME/RC Yard, Mine-II NLC on the night o 03.09.2001. During the course of preliminary enquiry, P.W.1 ha recorded the statements of one Tamil Maran, Executive Engineer K.Gandhi, Junior Engineer, K.Shanmugam, CE, SME, Mine Zone, NLC Constable A.Charles, K.Subramaniam, driver of Truck No.TN-31-V-7500 Constable I.R.Babu and others. He explained, after taking th statements, he came to the conclusion that on 03.09.2001 at 20.0 hours Constable I.R.Babu took Truck (Tipper) TN 31-V-7500 on hire an taken the tipper with the help of K.Subramaniam, SME-MRR, Mine-II. H also explained that how the materials were loaded and handed over t various persons at Mandarakuppam. Though P.W.1 is not an eye witnes to the occurrence, as stated earlier, it was he, who conducted th

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preliminary enquiry regarding the theft of articles and examined al the persons concerned including K.Subramaniam, driver of the Truck.

7. P.W.2, K.Subramaniam is the next witness examined on the sid of the management. In his evidence before the Enquiry Officer, h has stated that at the relevant time, he was working in NLC Neyvel Mine-II. On 03.09.2001 in between Shed No.12 and 13 in Mine-II, on Tamil Maran, EE/SME Zone, saw the loading of some materials in privat vehicle TN-31-V-7500 at about 10.30 PM with the help of crane According to him, immediately, the Executive Engineer contacted th DCE over phone whether any material is being sent outside an confirmed that the above incident was nearly theft. Then, th Executive Engineer chased away the above vehicle up to Mine Auto, bu the vehicle escaped with the materials. Hence, the Executive Enginee reported to CISF as well as GM, Mines-II. On the next day, a messag was received stating that vehicle TN-31-V-7500 has been seized. Late on, the vehicle was taken by the Police and the police spotted th materials, Fluid coupling 3 Nos., bearing 1 No. on the information o the vehicle driver. On 05.09.2001, a theft report was given t Mandharakuppam Police Station by him. Based on the same, polic arrested the driver of the vehicle and the petitioner. A case wa registered by the police against these two persons.

8. The third witness examined by the management is one Vinoth a P.W.3. According to him, he is serving in CISF Unit, NLC, Neyvel since June 1999. He is working in Intelligence Wing of the CISF Unit NLC, Neyveli. He also narrated how he received the information an the steps taken by him. He also explained the examination of variou persons including the driver of the Tipper lorry as well as th petitioner.

9. Constable A.Charles was examined as P.W.4. According to him he is serving in CISF Unit, NLC Neyveli since 12.07.1999. He als explained what had happened on the night of 03.09.2001 and als informed the same to Tamil Maran, who tried to stop the truck, but th truck sped the spot. He also explained that he came to know fro several workers present there, that one crane has been taken t another place in the yard, which shows that the crane was used fo lifting materials. He also informed the same to the Intelligenc Officer.

10. Apart from the above witnesses, Tamil Maran, Executiv Engineer was also examined as P.W.5. According to him, on 03.09.2001 he came for night shift along with his colleague Gandhi, AE, SME MR at about 10.30 PM by their yard jeep. He further stated that whil they nearing to Shed No.12, they saw a private vehicle parked in fron of the Shed. When they came very near to that vehicle, it starte moving. At that time, they noted the registration number of th Tipper lorry as TN-31-V-7500. He also stated that since there was n

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night shift in that Shed, they suspected that something wron happened. Immediately he informed DCE, RC Yard Mr.J.Shivaiah Chetty.

11. The Enquiry Officer analysed the statements of prosecutio witnesses P.Ws.1 to 5 and arrived at a conclusion that, on 03.09.200 at about 23.00 hours, a Truck No.TN-31-V-7500 was engaged by Constabl I.R.Babu with truck driver K.Subramaniam of Kaliarkuppam village an used the truck for removing 3 Nos.of Fluid Coupling shell made o aluminium and one number of bearing from SME/RC yard and the material stolen with wrongful intention by I.R.Babu with the help of truc driver K.Subramaniam, were recovered after the arrest of the driver o 06.09.2001, based on the confession statement given to police, by bot the Constable I.R.Babu and driver Subramaniam. The charge frame against the Constable I.R.Babu proved beyond doubt.

12. A copy of the report was furnished to the petitioner. Th disciplinary authority, considered the entire materials including th statements of prosecution witnesses and also the fact that the charge official did not cooperate with the Enquiry Officer, and afte accepting the report, awarded the penalty of dismissal from service.

13. Questioning the said order, the petitioner preferred a appeal to the appellate authority, namely, the 2nd respondent. Th appellate authority, on going through various grounds raised in th appeal, the entire proceedings of the Enquiry Officer, order of th disciplinary authority, after satisfying himself, confirmed the orde of the disciplinary authority and dismissed the appeal.

14. Learned counsel for the petitioner vehemently contended tha considering the nature of the charge implicating the driver, viz. K.Subramaniam, non-examiantion of the said driver is a fatal to th case of the management. It is true that with the connivance an assistance of the said Subramaniam, truck driver, the alleged inciden had taken place at the instance of the petitioner. Learned counse appearing for the respondents has brought to our notice that th Enquiry Officer sent several notices summoning the said driver fo examination on the side of the management. According to her, in spit of best efforts, the driver did not turn up. She also pointed ou that due to threat and fear at the hands of the petitioner, the drive failed to turn up. On the other hand, there is no reason to disbelev the version of the prosecution witnesses. Though all the person examined on the side of the management did not witness the occurrence there is no reason to disbelieve their version. It is also not i dispute that based on the information, the lorry was chased; stole materials were recovered; the lorry was taken to the police statio and a case was registered against the lorry driver as well as th petitioner. After considering all these aspects, the disciplinar authority imposed appropriate punishment. As rightly pointed out, th petitioner is none else than a Constable in CISF Unit, Neyveli and hi

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primary duty is to protect the properties of the Public Secto Undertaking. When he himself was responsible for the theft o articles, there is no need to show any leniency in awardin punishment. We are satisfied that all the relevant aspects includin the gravity of proven charge has been considered by the disciplinar authority as well as appellate authority.

15. It is also relevant to point out that in the counte affidavit filed by the 1st respondent, it is stated that the petitione had suffered 7 punishments during his 10 years service. Considerin all these materials, we are in agreement with the conclusion arrive by the respondents and unable to accept the contentions raised by th learned counsel for the petitioner.

15. Consequently, the writ petition fails and the same i dismissed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commandant,
   CISF Unit, NLC,
   Neyveli.

2. The Deputy Inspector General,
   CISF Unit, Rajaji Bhavan,
   Chennai.

ONE CC TO MR. THENKODI NELSON, ACGSC SR 61301

ONE CC TO MR.MD. IBRAHIM ADVOCATE SR 60762

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SR(CO)

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